

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PHILLIP McCAIN,	§	
State Jail No. 02198655,	§	
TDCJ Nos. 527332, 622721, 1217162,	§	
1254941,	§	
Plaintiff,	§	
	§	
	§	
v.	§	CIVIL ACTION H-05-3223
	§	
Warden DENNIS MILLER, <i>et al.</i> ,	§	
	§	
Defendants.	§	

MEMORANDUM ON DISMISSAL

Phillip McCain, a State Jail Inmate, has sued under 42 U.S.C. § 1983. McCain seeks permission to proceed *in forma pauperis* under 28 U.S.C. § 1915. The Court DISMISSES this action because 28 U.S.C. § 1915(g) prohibits McCain from bringing a prisoner civil rights suit without prepayment of the filing fees.

A national prisoner litigation index shows that McCain has filed **ninety-seven** (97) other lawsuits in the federal district courts in Texas, including transfers. The index shows that the presiding district court dismissed three of these lawsuits as frivolous, malicious, or for failure to state a claim on which relief may be granted. *See McCain v. Scott, et al.*, 6:96cv539 (E.D. Tx. June 21, 1996); *McCain v. Berg, et al.*, 6:96cv442 (E.D. Tx. July 29, 1996); and *McCain v. Scott, et al.*, 6:96cv511 (E.D. Tx. July 29,

1996). When McCain filed each of these cases, he was incarcerated in a prison or a detention facility. The district courts dismissed each of these cases before McCain filed this case. Federal courts have also sanctioned and barred McCain. *See e.g.*, *McCain v. Beocratft, et al.*, 6:96mc212 (E.D. Tx. Oct. 23, 1996); *McCain v. Scott, et al.*, 6:97cv662 (E.D. Tx. July 27, 1997); and *McCain v. Scott, et al.*, 97-40912 (5th Cir. Dec. 10, 1997).

Under 28 U.S.C. § 1915(g), a prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action or appeal which the court dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, unless he is under imminent danger of serious physical injury. *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). McCain's allegations here do not show that he is in imminent danger of serious physical injury. *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

Accordingly, this case is DISMISSED under 28 U.S.C. § 1915(g). McCain's motion to proceed *in forma pauperis* [Docket Entry No. 2] is DENIED.

SIGNED at Houston, Texas, on this 21st day of September, 2005.



DAVID HITTNER

United States District Judge

